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In re Patent No. 6,871,150 :
Issued: March 22, 2005 :
Application No. 09/931,145 : PATENT TERM ADJUSTMENT
Filed: August 15, 2001 :
Atty. Dkt. No.: 6270/66 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT UNDER 37 C.F.R. § 1.705(b)," filed May 12, 2005, requesting that the above-identified patent be accorded a patent term adjustment of 694 days. This matter is being treated as a timely request for reconsideration under 37 CFR 1.705(b).

The request for reconsideration of patent term adjustment under 37 CFR 1.705(b) is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 6,871,150 on March 22, 2005. An initial request for reconsideration along with required \$200.00 application fee were timely filed March 25, 2004 in accordance with 37 C.F.R. § 1.705(b). A decision was mailed February 8, 2005 wherein decision on request under 37 CFR 1.705(b) as held in abeyance pending issuance of the actual patent.

The patent issued with a PTA of 475 days. Applicants argue that in accordance with 35 USC 154(b)(1)(B) and 37 CFR 1.702(b), applicant is entitled to an additional adjustment of 219 for failure to issue the above-identified patent within three years from the date upon which the application was filed.

Review of the application history reveals that the Office failed to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. See, 37 CFR 1.702(a)(1). Thus, an adjustment of 475 days under 37 CFR 1.703(a)(1) was accorded. The delay began October 16, 2002, the day after the date that is fourteen months after the date on which the application was filed, and ended February 2, 2004, the date of mailing of non-final Office action.

There were no further adjustments or reductions at the time of Allowance.

Applicants are correct in that the Office did not issue the patent within 3 years of the date upon which the application was filed on March 22, 2001. Specifically, the patent issued on March 22, 2005, three years and 219 days after its filing date. The period of delay under 35 U.S.C. 154(b)(1)(B) and § 1.702(b) is 219 days. See § 1.703(b).

However, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay totaling 475 days attributable to grounds specified in § 1.702(a)(1) and § 1.702(a)(2) overlap with the 219 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 475 days.

Thus, the PTA, as correctly indicated on the patent, is 475 days.

Any request for reconsideration of this decision must be submitted within 30 days of the mail date of this decision. This period of time for response cannot be extended under 37 CFR 1.136.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

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